

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TRAVIS OLIVER, #458664,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 20-cv-00735-JPG
)	
DR. MARCOWITZ,)	
)	
Defendant.)	

ORDER

GILBERT, District Judge:

This matter is before the Court on Plaintiff Travis Oliver’s Motion for Default Judgment Against Dr. Marcowitz (Doc. 51) and Dr. Marcowitz’s Motion to Set Aside Default (Doc. 53). The Court screened Plaintiff’s First Amended Complaint (Doc. 15) under 28 U.S.C. § 1915A on April 27, 2021 (“Screening Order”). (Doc. 21). Pursuant to the Screening Order, Dr. Marcowitz was sent a Request for Waiver of Service of Summons on April 27, 2021. (Doc. 22). The waiver was returned executed on May 5, 2021. (Doc. 24). Dr. Marcowitz’s answer was due on or before June 28, 2021. (*Id.*).

Before this deadline expired, Plaintiff’s mail was repeatedly returned undeliverable. (Docs. 21-23, 25). Therefore, on May 10, 2021, the Court directed Plaintiff to show cause why this case should not be dismissed based on his failure to comply with orders requiring him to update his address. (Doc. 26). When he did not respond, the Court entered a Notice of Impending Dismissal on May 24, 2021. (Doc. 27). When he again failed to respond and documents were returned undeliverable, the Court dismissed this action on June 3, 2021. (Docs. 30-31).

Plaintiff later filed a Motion for Reconsideration, and the Court vacated the dismissal order and judgment on March 10, 2022. (Docs. 40 and 47). The Court separately entered the following Order on the same date:

ORDER: The First Amended Complaint survived screening under 28 U.S.C. 1915A. COUNT 1 shall now proceed against Dr. Marcowitz, who has already been served with this lawsuit and filed his waiver of service of summons. Dr. Marcowitz shall timely answer or otherwise respond to the [15](#) First Amended Complaint and not waive filing a reply pursuant to 42 U.S.C. 1997e(g). Pursuant to Administrative Order 244, Dr. Marcowitz should only respond to the issues stated in the Merits Review Order at Doc. 21.

(Doc. 48).

Dr. Marcowitz failed to move, answer, or otherwise plead in response to the First Amended Complaint. As a result, the Court directed the Clerk's Office to enter default against this defendant on May 25, 2022. (Doc. 49). The Clerk's Entry of Default was docketed the following day on May 26, 2022. (Doc. 50).

On June 6, 2022, Plaintiff filed a Motion for Default Judgment Against Dr. Marcowitz. (Doc. 51). One day later, Dr. Marcowitz's attorney filed a Notice of Appearance and a Motion to Set Aside Default. (Docs. 52-53). In the Motion, counsel explains that he stopped monitoring the case after it was dismissed on June 3, 2021, and he received no notice of new filings because he did not enter his appearance in the matter before it was dismissed. Dr. Marcowitz asks the Court to set aside the default and set a reasonable deadline for answering or otherwise responding to the First Amended Complaint. (Doc. 53).

Given that the motion was promptly filed one day after Plaintiff moved for default judgment and Dr. Marcowitz has demonstrated good cause for missing the deadline to answer, Plaintiff's Motion for Default Judgment against Dr. Marcowitz (Doc. 51) is **DENIED**, and Defendant's Motion to Set Aside Default (Doc. 53) is **GRANTED**. The Clerk's Entry of Default

(Doc. 50) is **VACATED**. Dr. Marcowitz shall file a responsive pleading to the First Amended Complaint (Doc. 15) no later than **June 28, 2022**.

IT IS SO ORDERED.

DATED: 06/14/2022

s/J. Phil Gilbert
J. PHIL GILBERT
United States District Judge